Electrical Construction Services, Inc. *and* Local 58, International Brotherhood of Electrical Workers, AFL–CIO, CLC. Case 7–CA–34708

October 18, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by Local 58, International Brotherhood of Electrical Workers, AFL–CIO, CLC (the Charging Union), on June 18 and July 1, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint on July 30, 1993, against Electrical Construction Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On September 17, 1993, the General Counsel filed a Motion for Default Summary Judgment with the Board. On September 21, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Region, by letter dated August 18, 1993, notified the Respondent that unless an answer was received by September 2, 1993, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent, a corporation, with its principal office and place of business in Kentwood, Michigan, and with another office and place of business in Grand Rapids, Michigan, has been engaged in providing electrical construction subcontracting services for construction contractors at various jobsites within the State of Michigan. The Respondent has, at all material times, maintained a jobsite at the K-Mart/Pace Membership Warehouse Development project in Port Huron, Michigan, which is the only jobsite involved in this case.

During the 12-month period ending June 30, 1993, the Respondent, in conducting its business operations, provided within the State of Michigan subcontracting services valued in excess of $50,000 to Freeman Darling, Inc., a commercial, industrial and institutional contractor which is incorporated in Michigan, Illinois, Florida, and New York State, and has facilities located in Michigan and Illinois. Freeman Darling, Inc., is the general contractor on the Respondent's Port Huron jobsite.

During the 12-month period ending June 30, 1993, Freeman Darling, Inc., had gross revenues in excess of $500,000 and purchased from points located outside the State of Michigan and caused to be transported directly to its Michigan facilities products, goods, and materials valued in excess of $50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Charging Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All full-time and regular part-time apprentice wiremen, journeymen wiremen, and working foremen employed by the Respondent at or out of its Kentwood and Grand Rapids facilities and at its Port Huron jobsite, but excluding all office clerical employees, guards and supervisors as defined in the Act (the unit), constitute a unit appropriate for purposes of collective-bargaining within Section 9(b) of the Act.

Since about May 13, 1993, and at all material times, the Charging Union has been, and is, the exclusive collective-bargaining representative of the employees in the unit set forth above and has been recognized as such by the Respondent. Such recognition is derived from a letter of assent executed by the Respondent on April 14, 1993, and by the Charging Union on April 26, 1993, binding the Respondent to the articles of agreement and working rules (the Agreement), executed by the Charging Union and the Southeastern Michigan Chapter, National Electrical Contractors Association of Detroit, Michigan, which is effective by its terms from June 1, 1992, until May 31, 1995.

About May 13, 1993, the Respondent, an employer engaged in the building and construction industry, described above, granted recognition to the Charging Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Charging Union for the period from May 13, 1993, to May 31, 1995, without regard to whether the majority status of the Union has ever

been established under the provisions of Section 9 of the Act.

At all times since about May 13, 1993, and at all material times, based on Section 9(a) of the Act, the Charging Union has been the limited exclusive collective-bargaining representative of the unit.

The Agreement described above obligates the Respondent to pay certain wages to unit employees and to make contributions on behalf of all unit employees for working dues and to contribute to various union fringe benefit funds on behalf of unit employees including:

(a) National Electrical Benefit Fund
(b) Electrical Workers' Insurance Fund
(c) Vacation Fund
(d) Supplemental Pension Plan
(e) Supplemental Unemployment Benefit Plan
(f) Electrical Training Trust Fund
(g) National Electrical Industry Fund and
(h) Annuity Fund

About June 2, 1993, the Respondent furnished paychecks to unit employees David Southwick, James Spratt, and John Williams, which were subsequently returned unpaid due to insufficient funds.

Since about June 16, 1993, the Respondent has failed and refused to furnish paychecks to all of the unit employees for work performed during the week ending June 13, 1993.

Since about May 26, 1993, the Respondent has failed and refused to make contributions on behalf of all of the unit employees for working dues.

Since about June 2, 1993, the Respondent has failed and refused to make contributions on behalf of all unit employees to the various fringe benefit funds.

About June 10, 1993, the Charging Union, in writing, requested the Respondent to provide the following information:

(1) Whether or not the Respondent has filed for bankruptcy under chapter 7 or chapter 11 and, if so, a copy of the bankruptcy petition;

(2) If the Respondent has not filed for bankruptcy, whether or not a company related to the Respondent has filed for bankruptcy and, if so, the name of that company;

(3) Whether or not there is a debt owed to a local, state or federal government which has prevented the payment of wages and benefits to unit employees and, if so, to which government is the debt owed and what is the size of the debt;

(4) Whether or not there are tax liens on the Respondent and who is asserting the tax liens;

(5) Whether or not a local, state or federal government is executing on a tax lien; and

(6) Whether or not and when unit employees will be paid their unpaid wages and benefits.

The information requested by the Charging Union is necessary for, and relevant to, the Charging Union in the performance of its function as the limited exclusive collective-bargaining representative of the unit.

Since about June 10, 1993, the Respondent has failed and refused to provide the Charging Union with the information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide paychecks owed to unit employees and to make contributions for working dues and to the various fringe benefit funds on behalf of unit employees as required by the Agreement, we shall order the Respondent to comply with the Agreement and make whole its unit employees for its failure to do so as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1979), including any additional amounts applicable to such delinquent fund payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Interest on the amounts paid to employees shall be made as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide necessary and relevant information requested by the Union, we shall order the Respondent to provide the information to the Union.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Electrical Construction Services, Inc., Kentwood, Michigan, its officers, agents, successors, and assigns, shall

[1] The record does not indicate whether the National Electrical Industry Fund is a industry promotion fund and therefore a permissive subject of bargaining for which no remedy is warranted. *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981), and cases cited therein. We leave resolution of that issue to the compliance stage.

1. Cease and desist from

(a) Failing and refusing to provide paychecks owed to employees and to make contributions for working dues and to the various fringe benefit funds on behalf of employees in the unit described below, as required by its Agreement with Local 58, International Brotherhood of Electrical Workers, AFL–CIO, CLC:

> All full-time and regular part-time apprentice wiremen, journeymen wiremen, and working foremen employed by the Respondent at or out of its Kentwood and Grand Rapids facilities and at its Port Huron jobsite, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to provide information which is necessary and relevant to the Union in the performance of its functions as the limited exclusive representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the paychecks owed to unit employees and make contributions for working dues and to the various fringe benefit funds on behalf of unit employees as required by the Agreement, and make the unit employees whole for its failure to do so, as set forth in the remedy section of this decision.

(b) Provide the Union with the information it requested on June 10, 1993.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Kentwood and Grand Rapids, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 18, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to provide paychecks owed to employees and to make contributions for working dues and to various fringe benefit funds on behalf of employees in the unit described below, as required by our collective-bargaining agreement with Local 58, International Brotherhood of Electrical Workers, AFL–CIO, CLC:

> All full-time and regular part-time apprentice wiremen, journeymen wiremen, and working foremen employed by the us at or out of our Kentwood and Grand Rapids facilities and at our Port Huron jobsite, but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide necessary and relevant information requested by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL provide the paychecks owed to unit employees and make contributions for working dues and to the various fringe benefit funds on behalf of unit employees as required by the Agreement, and WE WILL make the unit employees whole for our failure to do so.

WE WILL provide the Union with the information it requested on June 10, 1993.

ELECTRICAL CONSTRUCTION SERVICES, INC.